

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the)
Complaint Against the)
MONTANA STATE AFL-CIO)

SUMMARY OF FACTS AND STATEMENT OF FINDINGS

M. Susan Good, in behalf of Citizens Against Prolific Spending (CAPS), filed a complaint against the Montana State AFL-CIO. The complaint alleges that the AFL-CIO violated Mont. Code Ann. §§ 13-35-225 and 13-37-230.

SUMMARY OF FACTS

1. In April, 1994, the AFL-CIO printed a four-page document containing a discussion of, among other matters, constitutional initiative 67 (CI-67). The document contained the following statement on the bottom of page 3:

This material was prepared by the Montana State AFL-CIO for use by its affiliates and others concerned about the harmful impacts of CI-66, CI-67, and the unnumbered property tax rollback initiative. This pamphlet is not copyrighted and may be reproduced.

The document does not contain the address of the AFL-CIO, nor does it contain the name and address of a treasurer of a political committee.

2. Copies of the document were produced and distributed to officers of various local AFL-CIO unions throughout Montana in April, 1994. The cost of production and distribution of the documents was \$178.13.

3. According to Don Judge, Executive Secretary of the AFL-CIO, a copy of the document was passed around the table at an

informal meeting of groups concerned about the potential effects of CI-67 should it become law. A number of photocopies of the document (less than ten by Mr. Judge's estimate) were made available to some participants at the meeting, at their request.

4. On July 12, 1994, CI-67 was certified to the Governor by the Secretary of State as qualifying for placement on the general election ballot.

5. Expenditures regarding the AFL-CIO's efforts to defeat CI-67 were reported to the Commissioner of Political Practices by the "Montana State AFL-CIO's Ballot Initiative Fund". The expense of the production and distribution of the document in question was not reported as an expenditure by the AFL-CIO.

STATEMENT OF FINDINGS

The complaint alleges that the document produced by the AFL-CIO was in violation of Mont. Code Ann. § 13-35-225, which provides in material part as follows:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol. [Emphasis added].

The complaint alleges that the document advocated the defeat of a ballot issue, and was thus required to contain the name and address of the person who financed the communication. The pivotal issue is whether CI-67 was a ballot issue at the time the funds were spent to finance the communication. Because I have determined that it was not, it is unnecessary to address whether the communication "advocated" the defeat of CI-67, or whether the expense is excluded from the definition of "expenditure" as a communication by a membership organization to its members, under Mont. Code Ann. § 13-1-101(7) (b) (iv).

Mont. Code Ann. § 13-1-101(10) states:

"Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral. [Emphasis added].

Pursuant to this definition, CI-67 did not become a "ballot issue" until July 12, 1994, when the Secretary of State certified to the Governor that it qualified for placement on the general election ballot. While the last clause of the above-quoted definition indicates that CI-67 became an "issue" when the form of the petition was approved by the Secretary of State, the "issue" did not become a "ballot issue" until it qualified for placement on the ballot. Any other interpretation of this definition would render

the word "ballot" meaningless, since prior to its qualification for placement on the ballot there was no guarantee that CI-67 would even be voted on at an election.

Mont. Code Ann. § 13-35-225 requires that certain communications that advocate the defeat of a ballot issue state, in a clear and conspicuous fashion, the name and address of the person who made or financed the expenditure for the communication. Since CI-67 was not a ballot issue in April, 1994, when the document was produced and distributed by the AFL-CIO, the communication was not subject to the requirements of the statute.

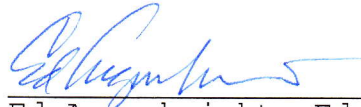
For similar reasons, the failure of the AFL-CIO to report the expense incurred for production and distribution of the document does not constitute a violation of Mont. Code Ann. § 13-37-230. That statute requires the reporting of expenditures to the Commissioner of Political Practices. "Expenditure" is defined as:

. . . a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election. [Emphasis added].

Mont. Code Ann. § 13-1-101(7)(a). The disbursement of funds for production and distribution of the document was not "for the purpose of influencing the results of an election", since CI-67 had not yet qualified for the ballot at the time the funds were spent. It may very well have been a cost associated with convincing people not to sign the petition to place CI-67 on the ballot, but under the above definition it was not a reportable "expenditure" under Mont. Code Ann. § 13-37-230.

Based on the preceding, there is insufficient evidence to conclude that the AFL-CIO violated Mont. Code Ann. §§ 13-35-225 or 13-37-230.

DATED this 21st day of February, 1995.



Ed Argenbright, Ed.D.
Commissioner of Political Practices